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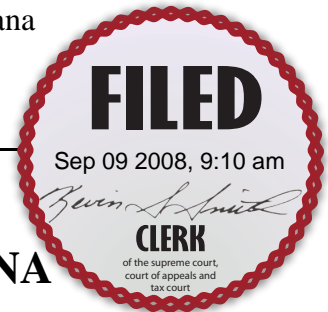
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF M.W., A MINOR CHILD,)
AND MOTHER, JENNIFER WATKINS,)
JENNIFER WATKINS,)
Appellant-Respondent,)
vs.)
MONTGOMERY COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner.)

No. 54A04-0803-JV-178

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0703-JT-54

September 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Jennifer Watkins (Mother), appeals the trial court's Order terminating her parental rights to her minor child, M.W.

We affirm.

ISSUE

Mother raises one issue on appeal, which we restate as follows: Whether the Montgomery County Department of Child Services (DCS) presented sufficient evidence to support the involuntary termination of the parent-child relationship under Indiana Code section 31-35-2-4.

FACTS AND PROCEDURAL HISTORY

M.W. was born to Mother on July 30, 1999. On November 17, 2005, the DCS received a call that M.W., then six years old, had not been able to get into her home after school and had been taken back to school. Because the school informed DCS that this had happened before, the DCS initiated an investigation for lack of supervision. The investigation resulted in a substantiation of neglect and a safety plan was instituted between Mother and DCS whereby Mother agreed to be awake and ready to care for M.W. when the school bus arrived at her home.

On November 28, 2005, the DCS received a report that Mother was using, manufacturing, and selling methamphetamine from her residence. The report also expressed concern about the conditions of the home and indicated that the utilities were being shut off. Melissa Gibson (Gibson), a family case manager with the DCS, together with a sheriff's deputy, went to Mother's home to investigate the allegations in the report. Mother only

allowed them to enter inside the front door of her residence. From there, Gibson and the sheriff's deputy observed piles of debris, trash, and clothing around a small space heater used to heat the home. When Mother was questioned about the alleged drug use, she became angry and asked Gibson and the sheriff's deputy to leave. On November 29, 2005, M.W. was removed from Mother's care and custody.

On December 20, 2005, the DCS filed a petition, alleging M.W. was a Child In Need of Services (CHINS) based on Mother's lack of supervision of M.W., the condition of her home, and her suspected drug use. On February 10, 2006, the trial court found M.W. to be a CHINS, and subsequently on March 10, 2006, a dispositional hearing was held. The dispositional order mandated Mother to undergo drug rehabilitation, individual and family counseling, and participate in supervised visits with her daughter.

Marilyn Richardson (Richardson), a counselor and owner of Rainbow Recovery, diagnosed Mother with dependency on methamphetamine. According to Richardson, Mother has a long history of substance abuse. Specifically, Mother started abusing alcohol at age twelve or thirteen, using marijuana and benzodiazepines at age fourteen, methamphetamine at age seventeen, and amphetamines at age twenty-five. Because of this extensive history, Richardson prescribed a course of intensive outpatient, relapse prevention, and continuing care. Mother enrolled in the substance abuse program in February of 2006 but failed to complete the first course of treatment because of drug use.

On May 26, 2006, due to Mother's failure to finish the substance abuse treatment at Rainbow House, the trial court relieved DCS of pursuing reunification services until Mother completed a residential substance abuse program. Mother did not enter a residential

treatment facility until September 26, 2006, when she entered Fellowship House. There, she attended intensive outpatient treatment but was discharged unsatisfactorily in November 2006 because she failed to find employment and to pay her fees. During her time at Fellowship House she was on probation for public intoxication and the discharge from the program, together with her positive test for marijuana, cocaine, and methamphetamine resulted in a violation of her probation. As a result, Mother was incarcerated for three months until February 15, 2007. In January 2007, Richardson conducted another assessment and again recommended Mother to enroll in an intensive outpatient treatment program upon release from prison. This time, Mother completed the program on October 9, 2007, and attends weekly Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings.

Also, upon Mother's release from incarceration, the DCS required her to undergo a psychological evaluation by Dr. Bart Ferraro (Dr. Ferraro), a clinical psychologist. Dr. Ferraro's evaluation, which included his review of records, his interview of Mother, and psychological testing, disclosed that Mother has limited coping skills "in large part due to the degree to which it appears she used drugs to cope" and views "the world as a to[o] complex, to[o] demanding and to[o] unrewarding place and as such is trying to avoid or escape the stresses rather than engage productively." (Transcript p. 34). He concluded that Mother lacked awareness as to the depth and degree of her psychological problems, and that "her behavior has already repeatedly endangered [M.W.] and that this endangering behavior has been proved to be harmful to [M.W.]." (Tr. p. 36). With regard to Mother's future prognosis, Dr. Ferraro indicated that Mother is in need of the "kind of therapy that would occur regularly on a weekly basis and would occur for at least a couple of years and perhaps

longer.” (Tr. p. 36). Nevertheless, he cautioned not to assume that “if [Mother] were to start therapy that things would be much better right away and a child could [not] be expected to be safely and securely cared for until a longer period of treatment had unfolded.”

In addition to Mother, Dr. Ferraro also tested M.W. He testified that M.W. is a fragile girl, whose ability to tolerate stress has significantly declined, indicating evidence of “unmet dependency needs.” (Tr. p. 42). Dr. Ferraro revealed that children who do not “feel sufficiently cared for or nurtured [] often go into adolescence and adulthood in a searching mode and are more vulnerable to search in self-defeating or self-destructive ways via drugs, sex or other relationship problems.” (Tr. p. 42).

In May of 2007, Mother was also referred to Laura Dolph (Dolph) of Cummins Behavioral Health for individual therapy. Between May of 2007 and November of 2007, Mother attended only eight sessions despite the fact that weekly therapy had been recommended. Dolph indicated that Mother struggles with the ability to read her daughter’s non-verbal cues, to be sensitive to what M.W. is saying, and to understand her emotional needs.

In general, Mother has a history of instability in employment and housing. At the time of M.W.’s removal, Mother was not employed. In fact, she was last employed in January of 2005. Mother has been homeless, residing with family and friends. She lost her eligibility for Housing and Urban Development (H.U.D.) housing because she allowed her mother to stay with her in violation of H.U.D. rules. At the time of the termination hearing, Mother was still without employment and housing.

On March 6, 2007, DCS filed its Petition to Terminate the Parent-Child Relationship between M.W. and both Mother and her biological father (Father). On November 20, 2007, the trial court conducted a trial on DCS' petition. On February 11, 2008, the trial court issued its Order, terminating the parental rights of Mother and Father. In its twelve-page Order, the trial court concluded that (1) the conditions and circumstances which resulted in M.W.'s removal from her Mother's care are not likely to be remedied and (2) a continuation of the parent-child relationship would be harmful and detrimental to M.W.

Mother now appeals.¹ Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother contends that the DCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship between Mother and M.W. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In Re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of

¹ We note that Father is not part of this appeal.

parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is only designated as a last resort when all other reasonable efforts have failed. *Id.* This policy is in recognition of the Fourteenth Amendment to the United States Constitution which provides parents with the right to establish a home and raise children. *Id.* However, these protected parental rights are not absolute and must be subordinated to the children's interest to maintain the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Id.* Although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibilities as parents. *Id.* To effect the involuntary termination of a parent-child relationship, the DCS must present clear and convincing evidence establishing that:

one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999 the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

In the instant case, Mother asserts that the trial court erred in terminating her parental relationship with her daughter. Specifically, she contends that she had achieved significant progress in the treatment of her substance abuse problems, warranting a finding that the conditions which led to M.W.'s removal had been remedied.

To determine whether conditions are likely to be remedied, the trial court must examine Mother's fitness to care for M.W. as of the time of the termination hearing and take into account any evidence of changed circumstances. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). At the same time, the trial court must evaluate Mother's patterns of

conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

Here, the record clearly establishes that initially Mother was not inclined to take advantage of the services offered by DCS in order to regain custody of M.W. From the onset of the CHINS proceedings in December of 2005 until her release from incarceration in February of 2007, Mother unsuccessfully participated in services. At the beginning of DCS' action, Mother was referred to family preservation services; however, due to her lack of participation, these services were terminated. Likewise, she failed to complete a first substance abuse program because she insisted on continuing to use drugs. Thereafter, she was discharged unsatisfactorily from a residential treatment program at Fellowship House due to non-payment of dues and lack of employment. Alongside her discharge, she tested positive for marijuana, cocaine, and methamphetamine. As she was on probation at the time she tested positive, Mother's probation was revoked and she was incarcerated for three months until February 15, 2007.

Upon her release in February of 2007, Mother commenced to participate with DCS. She complied with DCS' request to be psychologically evaluated by Dr. Ferraro and started individual therapy with Dolph at Cummins Behavioral Health. Mother re-enrolled and attended family preservation services and meets M.W. during therapeutically supervised visits. She started and successfully completed an intensive outpatient treatment program at Rainbow Recovery. Since her completion on October 9, 2007, Mother has been attending weekly AA/NA meetings. The record reflects that, at the time of the termination hearing, Mother had been clean from drugs for fourteen months.

Nevertheless, even though we applaud Mother for making great strides in battling her abuse problems, she still has a long road ahead of her. Dr. Ferraro, after performing psychological testing on Mother opined that even though Mother's sobriety is a significant step in the right direction, her diagnosis of personality disorder will require a more sophisticated kind of intervention. He clarified that Mother's drug use is born out of her psychological injuries and because she lacks the skills to cope with stresses in her life, she turns to drugs as a substitute. Dr. Ferraro concluded that Mother is in need of continuing substance abuse treatment and intensive psychological treatment which would take at least a couple of years before improvement could be made.

At trial, Dolph testified that she recommended to Mother that she attend weekly therapy sessions to address her mental health issues. However, between May of 2007 and November of 2007, Mother participated in only eight sessions. Dolph stated that, when she attended a session, Mother often had problems controlling her emotions. Dolph also indicated that Mother would benefit from continuing therapy as she struggles with the ability to read M.W.'s non-verbal cues, and to be sensitive to her daughter's emotional needs.

Our review of the record further discloses that Mother has a difficult time in addressing her employment and housing situation. Mother's last employment dates from January of 2005; at the time of M.W.'s removal, Mother was unemployed. Because her driver's license is suspended, her employment opportunities are limited to the Crawfordsville area. Although she has been working with family preservation services in an attempt to find suitable employment, she only submitted about twenty applications. In addition, Mother has been homeless, residing with family and friends. Various financial impediments obstruct

Mother's quest for a home, such as an outstanding electric bill of \$525.00 due to non-payment on a former residence, an outstanding gas bill of \$300.00, a debt of \$200.00 owed to a child care provider, she owes \$600.00 to her former landlord, and \$4,000.00 to the Bureau of Motor Vehicles for an automobile accident without insurance. She also owes \$920.00 to H.U.D. for rent she received during a period in which she was determined to have violated H.U.D. rules. Until Mother reimburses this amount to HUD, she is not eligible to receive H.U.D. housing. Consequently, her lack of employment leaves her without any means to satisfy her debts.

With regard to M.W., the record reflects that Dr. Ferraro also conducted a psychological assessment of M.W. During his interview, M.W. told him about her recollection of experiences while in her Mother's custody that involved violence that she had witnessed and neglect. Dr. Ferraro indicated that because of M.W.'s fragility and unmet dependency needs while in her Mother's care, she is already coming to anticipate conflict more so than comfort or nurturing. He concluded that M.W. is at risk psychologically at this time and needs the most stable, consistent, and supportive environment possible; not an environment which could fuel destabilization, be unpredictable or otherwise would perpetuate the kinds of anxiety she has had to cope with in her young life. Observing some interaction between M.W. and her Mother and her foster mother respectively, he opined that the bond between M.W. and her foster mother was more secure, more anchoring, and less ambivalent than the bond with her Mother. In sum, based upon his evaluation, Dr. Ferraro expressed concerns about placing M.W. with Mother because this placement would not represent the most stable, secure and developmentally healthy environment for M.W. to heal

from the first years of her life and go on to experience her adolescent and adult years in a more developmentally healthy fashion.

M.W.'s clinical social worker, Shawna Chung (Chung), supervised the therapeutic visits between M.W. and Mother. She testified that while the initial visit was fine, during later visits Chung became concerned about the questions Mother was asking M.W. Specifically, Mother would ask M.W. where she wanted to live. Mother made promises if M.W. chose to live with her and also told M.W. she could no longer see mom if she would chose to live with her foster parents. Chung concluded that M.W. would be at high risk of regression if she were returned to Mother's care.

Finally, Sue Brassel (Brassel), M.W.'s Court Appointed Special Advocate (CASA), testified that while in foster care, M.W. has made significant progress. Also, M.W. has become a lot calmer in class and is getting straight A's. Brassel concluded that termination of Mother's parental rights would be in M.W.'s best interests.

Based on the totality of the evidence before us, we are concerned about Mother's extensive therapeutic needs and long-term future prognosis with regard to her psychological problems and substance abuse. In particular, we are mindful of Dr. Ferraro's observation that if therapy is continued, improvement should only be expected in a couple of years. Besides this, she is unemployed and homeless with substantial debts. Even assuming that Mother overcomes the long odds stacked against her, we cannot force M.W. to wait any longer for the opportunity to enjoy the permanency that her counselors think she needs for her future development and overall well-being. *See In Re S.P.H.*, 806 N.E.2d at 883. As our supreme court has explained:

To permit the children to travel from one home to another while termination proceedings span across the years is incongruous and contrary to the federal and state policy of minimizing the ‘foster care drift’ that has doomed millions of children to interim, multiple and otherwise impermanent placement. Due to the immeasurable damage a child may suffer amidst the uncertainty . . . it is in the child’s best interest and overall well being to limit the potential for years of litigation and instability. It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child’s sound development as uncertainty.

Baker v. Marion Co. Office of Family and Children, 810 N.E.2d 1035, 1040 (Ind. 2004) (quotations and citations omitted). *See also Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied* (“[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship”).

DCS proved by clear and convincing evidence that there is a reasonable probability that the conditions that led to M.W.’s removal would not be remedied and that removal is in M.W.’s best interests.² The DCS established that a satisfactory plan for the care and treatment of M.W., namely, adoption, is in place. Therefore, we affirm the trial court’s order terminating M.W.’s parental rights to her daughter.

² As part of her argument that the conditions that resulted in M.W.’s removal had been remedied, Mother asserts that DCS removed her daughter because she is poor. However, there is no evidence in the record that supports Mother’s contention. To the extent that she argues that her homelessness, unemployment situation coupled with her debts amount to poverty, we would point out that DCS’ concerns of Mother having a home and being able to provide for M.W.’s well being are valid considerations. *See, e.g., Carrerra v. Allen Co. Office of Family and Children*, 758 N.E.2d 592, 595 (Ind. Ct. App. 2001) (a parent’s historical inability to provide adequate housing, stability and supervision coupled with a current ability to provide the same will support a finding that the continuation of the parent-child relationship is contrary to the child’s best interests).

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err by terminating Mother's parental rights.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.